

***United States Court of Appeals
for the Second Circuit***



APPENDIX

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WITH PROOF
OF SERVICE

74-2606

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UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

GABRIEL MARIN,

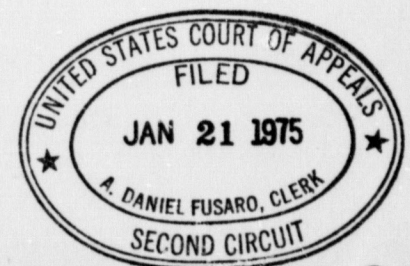
Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANT'S APPENDIX

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(4501A)

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DOCKET ENTRIES

100
DOCKET

JUDGE FRANKEL

74 CRIM. 379

TITLE OF CASE

THE UNITED STATES

VS.

GABRIEL MARIN

ATTORNEYS

For U. S.:

Thomas E. Engel, AUSA

264-6173

For Defendant:

Rubin, Cold & Geller

299 B'Way NYC

ABSTRACT OF COSTS

AMOUNT

CASH RECEIVED AND DISBURSED

(07)

DATE

NAME

RECEIVED

DISBURSED

Fines,

Clerk, S.S. 3

Marshal,

Attorney,

~~XXXXXXXXXXXX~~ 21~~XXXXXXXXXX~~ 812,841(a)(1)(b)Distr. & possess. w/intent to
distr. Cocaine, II.

(One Count)

DATE

PROCEEDINGS

4-11-74 Filed indictment.

4-22-74 Adjourned to 4-29-74 at 10:30 A.M. Pierce, J.

4-29-74 No appearance. Bench Warrant ordered. Court directs entry of not guilty plea. Case assigned to Judge Frankel for all purposes. Bauman, J.

4-30-74 B/W issued.

5-1-74 Filed Warrant with return... Deft appears, atty. present. B/W vacated deft ROR case referred to Frankel, J. Bauman, J.

5-2-74 Filed notice of appearance by Euseroff & Sonenshine 186 Jorzeleman St. Bklyn N.Y.

DOCKET ENTRIES

.2.

FRANKEL, J.

	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
	Filed notice of readiness for trial.		
31-74	Bench warrant ordered....Frankel,J.		
8-1-74	Bench warrant vacated by Court trial set for Sept.18-74.....		
8-8-74	Filed CJA appointment of Richard Schoen P.O.B. 427 Madison Station NYC..Frankel,J.		
8-8-74	Mail original CJA copy 1 to the A.O. for payment...Frankel,J.		
✓ 9-11-74	Filed Governments Request To Charge.		
9-16-74	Filed constitutionnal rights form..Deft & atty present. Deft withdraws plea of not guilty AND PLEADS GUILTY...Pre-Sent. report ordered. Sent. 11-1-74 10 A.M. Frankel, J.....		
11-1-74	Deft & atty.present. Application for withdrawel of his plea of GUILTY TO NOT GUILTY is GRANTED..Trial set for 10 a.m. Nov. 21,1974.Deft R.O.R....Frankel,J.		
11-14-74	Filed deft's request to charge.		
11-14-74	Filed Deft's proposed questions to potential jurors.		
11-19-74	Filed Govt's supplemental request to charge.		
11-20-74	Filed consent and order to change EYseroff & Sonnenshine as atty.		
11-21-74	Deft & Atty.Alvin Geller present) JURY TRIAL COMMENCED.		
11-22-74	Trial cont'd.		
11-25-74	Trial cont'd. and concluded JURY VERDICT GUILTY..Sent.12-2-74..Deft R.O.R..... Frankel, J.....		
12-3-74	Filed deft's financial affdvt.		

DOCKET ENTRIES

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FRANKEL, J.

PROCEEDINGS

Filed Judgment (Atty. Alvin Geller, present) The imposition of prison sentence is suspended.. Deft is placed on probation for a period of THIRTY (30) MONTHS, subject to the standing probation order of the Court... Deft is placed on probation on special condition and understanding that he will proceed to enter the PHOENIX HOUSE PROGRAM and be housed on HART ISLAND under the program as indicated in a letter from Dan Hughes dated this day..... Probation Office is to receive monthly reports on deft's progress and with the further understanding that his failure to participate fully and complete that program will be deemed to be a breach of the conditions of this probation... FRANKEL, J. Ent, 12-4-74

12-5-74 Filed notice of appeal from judgment of 12-2-74.. Copy given to U.S. Atty. and mailed to deft at 319 East 95th St. NYC Apt. 10

12-10-1974 Filed notice of motion to proceed in forma pauperis with memo endorsed.

12-12-1974 Filed memo endorsed by motion of 12-10-73. Leave to proceed in forma pauperis is granted.

12-17-74 Filed brief in opposition to Gov. TS supplemental request to change + deft supplemental requests to change.

12-17-74 Filed transcript of proceedings dated Nov. 21, 22, 25-1974.

A. E. Thompson

A TRUE COPY
FATHOMER E. A. THOMPSON, Clerk

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C

INDICTMENT

TEL:GW

73-3928

USA-33s-528 - IND/INF - POSSESSION WITH INTENT TO DIST. NARC DRUG
Ed. 5-10-71

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- -x

UNITED STATES OF AMERICA :

-v- :

GABRIEL MARIN, :

Defendant :

----- x

The Grand Jury charges:

On or about the 6th day of December, 1973
in the Southern District of New York,

GABRIEL MARIN

the defendant , unlawfully, wilfully and knowingly did
possess with intent to distribute, a Schedule II
narcotic drug controlled substance, to wit, approximately
one gram of cocaine.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

FORWARDED

PAUL J. GORMAN
United States Attorney

CHARGE TO JURY

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at the conclusion that you have taken an oath here at the outset of the trial, and that oath is a requirement that you judge this case on the evidence and that you not take considerations of sympathy for the defendant or annoyance, perhaps, at what you might consider light treatment for another person involved, you must weigh this evidence against this defendant. And if you find the government hasn't borne its burden of proving beyond a reasonable doubt that Gabriel Marin is guilty, I want you to acquit the defendant.

But it is likewise your duty that if the evidence leads inexorably to the conclusion that Gabriel Marin is guilty as charged, you must do that unpleasant duty, you have no other choice.

Thank you.

THE COURT: We'll take ten minutes before the charge.

(Recess.)

*

*

*

(In open court, jury present.)

THE COURT: Now, Miss Chernoski and members of the jury, we come to the last and obviously the critical stage of this proceeding, the time when the case will be given to you for your judgment.

As was mentioned and stressed when you were

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2 impaneled, you're the judges of the facts, and the facts
3 constitute the problems in this case. It's for you to
4 decide what happened on the occasions last December to which
5 this case relates. It's for you to recall the evidence and
6 to appraise it, to judge the witnesses, the exhibits and the
7 inferences to be drawn from the materials that have been
8 placed before you.

9 What the attorneys have said is obviously
10 important, what I say will convey to you the few rules of law
11 that you are to apply to this case, but on the facts, the vital
12 center of this trial, you're the sovereign judges.

13 And remember, that you are to determine the facts
14 from the evidence. The defendant stands accused, but,
15 remember, an accusation, an indictment, is not evidence. The
16 evidence is the testimony you have heard, the exhibits that
17 are part of this record now; and, of course, you may
18 rely on the stipulations that counsel have entered into,
19 certain agreed facts addressed mainly, as I recall, to what
20 chemists would have told you about the exhibits that contained
21 white powder, in one instance said to be cocaine, and in the
22 other instance the quinine and starch.

23 The defendant comes here having entered a plea
24 of not guilty. That means that the prosecution has undertaken
25 the burden of proving him guilty beyond a reasonable doubt

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2 and that he must be acquitted unless you are unanimously
3 persuaded that that burden has been sustained.

4 It is a corollary of that burden in a
5 criminal case that the defendant doesn't have to prove his
6 innocence, he doesn't have to present evidence of any kind.
7 He is, in the very standard, the very fundamental expression
8 in our law, presumed to be innocent, and that presumption will
9 require you to acquit him unless after your deliberations you
10 are convinced unanimously and beyond a reasonable doubt
11 of his guilt.

12 Being under no duty to present any evidence,
13 a defendant, as you have been informed more than once,
14 has the right to decide, by his own judgment with counsel,
15 whether or not he will take the stand in a particular
16 case. You know this defendant has not taken the witness
17 stand. You will have in mind that in order to preserve the
18 substance of his right you must not draw any inference of
19 any kind against him because he didn't take the stand.
20 It shouldn't play any part in your deliberations, you should
21 not consider it at all beyond this moment.

22 Now, the concept of proof beyond a reasonable
23 doubt is familiar to everyone. It is also basic in
24 our legal system. It is an essential part of instructions
25 to juries in criminal cases in our Courts.

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Very briefly, those words, "Reasonable doubt," mean what they are intended literally to convey. They mean a doubt that takes its origin in your reason, your reason applies to the evidence or lack of evidence in the case before you.

A reasonable doubt is one that has substance and is not the result of conjecture or speculation or imagination. It's a doubt, as I say, that has its basis in your collective judgment, your collective wisdom and experience, all applied to the record of evidence in the case before you. It's not an excuse to avoid performance of what may be an unpleasant duty. It's not a pretext for extending sympathy to any party.

A reasonable doubt is the kind of doubt that would make a prudent person hesitate before taking action in some matter of importance to himself or to herself. Saying that at greater length, if you, in your own affairs, are confronted with some important decision and if you proceed objectively and unemotionally to review all the factors that have a bearing on that decision, and if at the end of that careful and thorough kind of review you find that you are unsure of your judgment, beset by uncertainty, you'd have a reasonable doubt.

The converse is also true, if you had that kind of

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2 important decision to make and you proceed to engage in
3 that kind of detached and objective review, and if at the
4 end of that you didn't have the kind of uncertainty or
5 reservation I have spoken about, you would not have a
6 reasonable doubt.

7 Proof beyond a reasonable doubt doesn't mean proof
8 beyond any conceivable doubt whatever. It doesn't mean proof
9 to an absolute or mathematical certainty. If it meant that,
10 then nobody could ever be convicted in any criminal trial
11 in our courts, because a trial, as I have told you, is an
12 occasion for testing out disputes about matters of fact. It
13 is in the nature of such disputes about matters of fact,
14 and most clearly about matters of fact that happened at
15 sometime in the past in some other place, that those questions
16 can't be resolved to an absolute mathematical, positive
17 certainty.

18 So we don't mean that when we speak of proof
19 beyond a reasonable doubt. What we do mean, and I think
20 the net of these words, of these standard instructions, is to
21 undertake to convey that meaning, we mean that the burden
22 of proof in a criminal case on the prosecution is a very
23 high one, and that you may convict only if your minds are
24 free from the kinds of reservations and uncertainty I've under-
25 taken to describe to you.

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2 Now, with those principles in mind, let's turn
3 to the relatively few, relatively simple, but obviously not
4 unimportant, rules of law that govern this case and govern
5 your deliberations. The indictment very briefly charges that
6 the defendant, Mr. Marin, violated a federal law in that
7 on or about December 6, 1973, he unlawfully, wilfully and
8 knowingly possessed, with intent to distribute, a quantity
9 of cocaine. Like all criminal charges in the federal court,
10 and in most state courts today, that charge arises under a
11 statute, it rests upon a statute, an enactment of Congress,
12 and very simply that statute is one which says it is a federal
13 crime to possess, wilfully and knowingly possess, cocaine or
14 other designated substances with intent to distribute
15 them.

16 Now, the law as it concerns us, and you in this
17 particular case, also provides that it is a crime to attempt
18 to possess cocaine with the intent to distribute. As this
19 case has developed, you know that it is the government's
20 theory that Mr. Marin attempted to possess cocaine rather than
21 actually possessing it, and that his actual possession was
22 never accomplished because, according to the government's
23 thesis, government agents had intercepted Mr. Caicedo in
24 New Orleans and had substituted the harmless white powder,
25 which is Exhibit 15, for the 93 percent pure cocaine, which is

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presented to you in the exhibits that have been marked
14-A, B, C and D.

Having stated that theory in those broad terms,
let me instruct you that in order to vindicate that theory, in
order to justify the conviction that it claims you should
return, the government must have persuaded you beyond a
reasonable doubt of each and every one of three essential
elements. When I say, "each and every one," I mean what that
logically and in English is meant to convey, that if any one
of these essential elements were not established, you would
have to acquit.

Now, the three essential elements are these:

First, that on or about December 6, 1973, the
defendant, Mr. Marin, specifically and deliberately intended
to acquire and possess cocaine;

Second, that he reasonably and rationally
believed on that occasion that he was acquiring cocaine from
Mr. Caicedo; and that he would have acquired cocaine but
for the intervening acts of government agents substituting
quinine or starch or whatever that allegedly harmless powder
was;

Third, that Mr. Marin acquired the substance which
he believed was cocaine with intent to distribute it,
specifically, with the intent to sell or transfer it to others

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2 in exchange for money.

3 Now, those essential elements, as I say, must
4 each and all be proved before you may convict, but I
5 don't think they present any specially technical problems for
6 your consideration. They present, as you know, questions of
7 fact, and central among those questions, as I have
8 given you the elements, are questions as to the state of
9 knowledge and intent at the times in question of the
10 defendant, Mr. Marin.

11 As I have said, in order to permit a conviction,
12 the proof must satisfy you that the defendant did the
13 things with which he is charged knowingly and wilfully, and those
14 words, "knowingly and wilfully," refer, of course, to state
15 of mind. They are, therefore, central in the
16 case but they are not especially complicated.

17 To establish knowing and willful behavior, the
18 government must have proved that the defendant did what
19 he's alleged to have done deliberately and purposely, knowing
20 what he was doing and intending to do what he was doing on
21 those occasions, meaning to take the actions he took and
22 understanding what he was doing at the time.

23 He could not be convicted if he acted only
24 carelessly or by accident, he must have gone to the place
25 at the time, said the things, intended to achieve the

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transaction, the transfer of that white powder, believing it to be cocaine and knowing all the while what he was about. He must have understood, too, the essential wrongfulness of his conduct.

Now, under the instructions I have given you, if those qualities of his behavior have been established by the evidence, the defendant could be convicted even if he was deceived into believing he was receiving cocaine when he actually was not receiving cocaine. And I have told you this in connection with defining for you the concept of the attempt the government claims it proved in this case.

I have also said that the defendant must have had an awareness of the essential wrongfulness of the conduct he was seeking to carry out and the objective he was seeking to achieve. That doesn't mean that he must be proved to have known of the particular statute, the enactment of Congress, that refers to prohibited transactions and controlled substances. It does mean that he must have acted with a sense that he was disobeying or simply disregarding the commands of the criminal law relating to dealings in cocaine and similar substances.

Now, I have talked to you about this central matter of knowledge and intent and I have said in so many words, and you understand, in any event, that that

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2 means you are attempting in your deliberations to ascertain the
3 state of Mr. Marin's mind on those occasions on December 4th,
4 5th and 6th about which you have heard. The state of
5 somebody's mind is a fact, the state of somebody's digestion,
6 some Judge once said, is a fact. Both are kinds of facts
7 that the outsider normally must appreciate, understand,
8 make findings about on the basis of so-called circumstantial
9 rather than direct evidence. You can't look at somebody's
10 mind normally and know from that kind of sensory analysis
11 what he or she is thinking, intending, believing.

12 So commonly, outside the courthouse and in the
13 courthouse we are in the habit of making judgments from
14 circumstantial evidence about what people know or believe or
15 think, and you will do that here. You will appraise all
16 the conduct that you find to have occurred on the
17 occasions in question, you will reconstruct the
18 conversations, you will consider the setting, the
19 surrounding circumstances, you will consider whatever the
20 evidence has taught you about the nature of the defendant and
21 the nature of the other people involved in the encounters that
22 you have been told about, and putting all these things together
23 all this circumstantial evidence, you will make your
24 determination whether the government has proved beyond
25 a reasonable doubt that the defendant knowingly and wilfully

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2 engaged in the wrongful conduct with which he is charged.

3 As you know, as you have been reminded in the
4 summations, the defendant relies in this case on a defense
5 known as entrapment. He doesn't concede, of course, that
6 the wrongful conduct with which he is charged occurred,
7 but he argues that even if he acted in the fashion alleged
8 and did the things charged, and even if those things would
9 otherwise constitute a crime of which he stands accused,
10 he may not be convicted because the government's agents
11 entrapped him.

12 It becomes necessary for you to understand,
13 therefore, what the word "entrapment" means and what it
14 signifies for your purposes in relation to this defense known
15 as the defense of entrapment.

16 The word in the law means very nearly, but
17 not necessarily exactly, what it means to you in common
18 speech. To give you its meaning takes a few sentences
19 to kind of spell out the setting in which you understand it,
20 the purpose of it, and ultimately in that setting the
21 nature of the question it presents for your decision.

22 The subject of entrapment starts with a
23 recognition by all of us, legal people and other people, that
24 stealth and stratagems are frequently necessary and
25 frequently proper for use by law enforcement people in the

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performance of their duties. We all know that the function of law enforcement is not only the prevention of crime and the apprehension of people who have committed crimes, but the detection of people who are planning and intending to engage in criminal conduct.

It's also clear, however, that that function of law enforcement people doesn't permissibly or properly include the manufacturing of crime. The defense of entrapment is based upon the policy of the law not to ensnare or entrap innocent persons into the commission of a crime or crimes.

With that understanding, that the officers of the law may detect and set traps for people who are planning and intending crimes, but they may not manufacture crime and lead innocent people into criminal conduct, there are two basic features to this defense of entrapment.

First, that the design of committing the crime originated with a law enforcement officer or a government agent rather than with the defendant in question; and second, that the defendant in question had no previous disposition or intent or purpose to commit the alleged offense.

There is entrapment, then, if a government officer or agent implants in the mind of an innocent person the disposition to commit the offense and then instigates and

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2 incites its commission in order that this person may be
3 arrested and prosecuted.

4 If government officers or agents merely present a
5 favorable opportunity or facilities to a defendant or defendants
6 for the commission of some crime, that isn't entrapment.
7 Entrapment occurs only if the criminal conduct of the
8 defendant is the product of the government's own creative
9 activity.

10 The fact that there's been inducement or a
11 request is not in itself an excuse for criminal conduct.
12 If a person is asked to commit a crime and goes ahead and
13 commits it, this may raise the question of entrapment but
14 is not itself sufficient to make out the defense of
15 entrapment.

16 When that question is raised, the question, was
17 there entrapment, the issue becomes -- and it will be for
18 you in this case -- whether the defendant before the
19 persuasion or inducement was a person ready and willing to
20 commit the crime or whether, on the other hand, the
21 action of the government's agents planted the idea of the
22 crime in the mind of an innocent person and in that
23 sense created the crime by its own actions.

24 Now, for purposes of that defense of entrapment
25 in this case, the witness Caicedo functions with others as

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a government agent. The government claims, and it claims to have proved beyond a reasonable doubt, that the defendant Marin had arranged with a friend or friends in Colombia to receive and sell cocaine, and that having arranged that he was here in New York ready and willing to carry out that plan.

The defendant claims that the idea of dealing in cocaine was instigated and planted by Caicedo, egged on by government narcotic agents.

To defeat that defense of entrapment, the government must prove its version of these events to your satisfaction beyond a reasonable doubt; that is to say, the government, to overcome this entrapment defense, must have satisfied you beyond a reasonable doubt that before Caicedo got in touch with him, the defendant Marin was predisposed, was ready and willing and intending to engage in the kind of cocaine transaction which he is then charged with having carried out on the occasion in question.

In judging that entrapment question and in judging all the fact issues in the case, you're going to be relying, obviously, on the testimony you have heard from the witness stand. You will be making judgments, that is, as counsel have reminded you in their summations, as to the reliability, the credibility of those witnesses. That's a

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key task for finders of fact or jurors in jury trials, but it's not a technical or legal subject. We bring lay people, as far as the law is concerned, lay people to the courthouse in the expectation which experience vindicates, that they will apply to the controversy placed before them their collective wisdom and their sense of things and their knowledge of life in making judgments about credibility. And it's expected that that is what you will be doing in making these judgments in this particular case.

As you go through the evidence in this relatively short trial you'll be asking how the several witnesses impressed you. Did they appear to be frank and straightforward? Did they appear to remember what they said they were telling you about? Did they appear to mean to tell you accurately what they remembered? How did the direct examination compare with the cross? Were there inconsistencies and contradictions or was the testimony essentially consistent and harmonious?

If there were contradictions within a witness' testimony or between witnesses, you will want to consider whether the contradictions relate to matters of central importance or matters of relative detail. Are they important or unimportant? Do they cause you to want to disregard all of the witness' account or do they simply reflect inaccuracies of the kind that may occur with honest

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witnesses as well as dishonest witnesses?

I have said you're the sovereign judges. If you find that any of these witnesses have testified to you falsely and intentionally falsely, you may disregard all their testimony, or, since your task is to seek the truth, you may consider and use whatever parts of their testimony seem to you to be appropriate and useable for your important purpose.

When you consider credibility here, as would be true if you were considering it anywhere else, you may want to take into account the interest of any particular witness in the possible outcome of this particular case. You may want to consider the extent, if any, to which a witness' interest may have colored or affected or distorted the account he gave of the events he purported to tell you about.

One particular species of interest that is the subject of perhaps some special focus arises in connection with the testimony of the witness Caicedo. You all know that the government in the work of law enforcement frequently deems itself obliged, finds itself obliged, to rely on the testimony of informants or accomplices to prove criminal conduct. That may, it is alleged at least, it may and perhaps is particularly true in the case of behavior involved in such matters as traffic in drugs.

In any event, there isn't anything improper or

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2 impermissible, and nobody suggests that there is, in the
3 employment of informants or accomplices for the work of law
4 enforcement. At the same time, as closing arguments of
5 counsel have stressed, it is important for a jury to treat
6 the testimony of such a witness with particular care and to
7 scrutinize it with particular caution.

8 You've heard that the witness Caicedo was
9 apprehended smuggling cocaine into the United States,
10 committing a crime. You've heard that he was invited, as the
11 testimony says, to cooperate. You've become aware that he
12 is said to have tendered such cooperation in an effort to help
13 himself in his own difficult situation. So you will be asking
14 yourselves, in appraising the testimony of Caicedo, whether his
15 testimony was, in whole or in part, a fabrication, lies,
16 induced perhaps by promises of favorable consideration or by
17 his belief that that would be a useful course for him to
18 take.

19 Did he believe that he would best help himself by
20 lying to the federal agents and then coming here and lying
21 in Court? Or did he believe that his best interests lay in
22 making a clean breast to the federal agents and then
23 coming to Court and telling you truthfully about things that
24 he knew of firsthand? That, very simply, puts the
25 question, and it's for you to judge him as you judge all

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2 other witnesses, and obviously pay attention to this
3 particular factor in his case in deciding the subject of
4 credibility.

5 With every witness in the end you put
6 together all the factors about him and about what he
7 said, the plausibility or implausibility and decide to what
8 extent you may rely on that person in making your judgments
9 about what happened at the times and places you've heard
10 about.

11 When you go to the jury room you will be
12 making all of those judgments together. There will be
13 twelve of you and the idea of that kind of group deliberation
14 is that you will reason together. Every juror has a right
15 and duty to contribute his or her viewpoint to the
16 deliberations. By the same token, each of you will want to
17 give an opportunity to others to contribute their points of
18 view and you will be planning to listen rationally and
19 courteously, I'm sure, to each other.

20 If you have a point of view at some point and
21 you're persuaded rationally that it was wrong, you won't
22 dig in stubbornly and refuse to change that point of view.

23 On the other hand, if you have a point of view that
24 you hold rationally and in good conscience, you won't give
25 it up or change it simply because you happen to be outvoted or

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outnumbered at any particular juncture.

I think you all know that a jury verdict either way in this kind of case must be unanimous. But the unanimous jury verdict is meant to reflect, and must reflect, the votes of twelve individual jurors, each abiding by his or her oath and each reflecting his or her judgment and conscience.

If you find during your deliberations that you need to hear any of the testimony again, send a note, we'll ask our reporter to find it and we'll have it read to you. If you need to see any of the exhibits, similarly, send a note through your forelady and we'll undertake to take care of that.

If you want to hear any of these instructions again, the same procedure, send a note.

If at any time when you are sending a note you are, as you may be at that point, divided in your views, don't tell us how the vote stands, don't tell us the score. That's a private matter for the jury and one on which neither counsel nor I should properly intrude.

The procedure here is to return a verdict in open court orally through the foreperson of the jury and Miss Chernoski, that will be your responsibility if and when you arrive at that point.

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Now, before we ask you to retire, let me find out if there are other different things counsel would like to talk about?

MR. GELLER: May I approach the side bar?

THE COURT: Yes.

(At the side bar.)

MR. GELLER: Your Honor, the defendant would object to that portion of your Honor's charge dealing with the elements of the crime that the government would have to prove. In particular, your Honor, your Honor indicated that what is crucial is the reasonable and rational relief that Mr. Marin would have whether he would acquire cocaine or not. And your Honor indicated it was totally irrelevant if Mr. Marin believed he was getting cocaine when in fact the cocaine was switched. I would object to that, your Honor. Basically it's the same argument I urged upon the Court at the close of the government's case.

THE COURT: Right. I think that is correct, too. I will make the same ruling.

MR. GELLER: Furthermore, the defendant objects to that portion of your Honor's charge concerning entrapment where your Honor stated in essence that entrapment occurs when the government plants an idea in the mind of an otherwise innocent person.

CHARGE TO JURY

1 DHpa

354

2 The defendant's contention is entrapment can occur
3 whether the alleged victim of the entrapment is innocent or
4 not. I would suggest to your Honor in the Sorrells case
5 there was never any question but that Mr. Sorrells was
6 involved in the illegal distribution of liquor; and in the
7 Sherman case there was never any question that Mr. Sherman
8 was involved in the distribution of narcotics.

9 I think what's crucial is the predisposition to
10 commit the particular act that the man is charged with rather
11 than his general predisposition to be an innocent human
12 being. I think your Honor led the jury to believe that if
13 Mr. Marin was somehow involved in the sale of cocaine prior
14 to his meeting with Mr. Caicedo, then he could not receive
15 the benefit of the entrapment defense, and I object to that
16 portion of it.

17 THE COURT: I think in the setting it's pretty
18 clear that it's the readiness and willingness to do this
19 that was intended.

20 Do you have any comment on that, Mr. Reilly?

21 MR. REILLY: No, your Honor. Not on that particula
22 point.

23 THE COURT: I will deny that exception.

24 MR. GELLER: I have nothing else.

25 MR. REILLY: Two small items to bring to your

CHARGE TO JURY

DHpa

355

attention.

I don't know whether you charged the jury that cocaine is a schedule narcotic substance.

THE COURT: No, I didn't and I'm not going to. I said the law forbids your possessing it with intent to distribute it.

MR. REILLY: The second thing is, you mentioned that for the purposes of entrapment Caicedo is an agent of the government. I would request that you instruct them that as of the time he became arrested he became an agent of the government and was not an agent of the government prior to that time.

THE COURT: Unless they reject your whole case, I think that is clear enough. I will deny that, too, I think.

(In open court.)

THE COURT: I think, Mr. Heusler and Miss Kelly, you know that you have been here in the event that we lose one of our first twelve jurors, but they have all pulled through, and so we are going to excuse you. I'll be relatively brief. Let me say we do thank you. You know that your function was essential and we are indebted to you for having fulfilled it.

Mr. Swanciger, our clerk, says as a reward you are excused for the rest of your terms of service.

CHARGE TO JURY

1 DHpa

356

2 Mr. Swanciger said you can go home or to some other pleasant
3 place again with our thanks. Good morning.

4 (Two alternate jurors excused.)

5 THE COURT: Now, if we can have the marshals
6 sworn.

7 Let me say the marshals will plan to take you to
8 lunch at about 1:00 and otherwise while you're deliberating
9 we'll be available to respond to any notes that you have
10 occasion to send.

11 (One marshal was duly sworn.)

12 THE CLERK: The jurors will please go with the
13 marshal.

14 (At 12:18 p.m. the jury retired to deliberate.)

15 (Recess.)

16 * * *

17 (Luncheon recess.)

18 (At 1:45 p.m. the jury resumed deliberations.)

19 (At 2:05 p.m. a note was received from the jury.)

20 (In open court, jury not present.)

21 THE COURT: You have seen the note, gentlemen?

22 THE CLERK: I read it to them, your Honor.

23 THE COURT: I take it that item one, the
24 transcripts of the telephone conversations, have gone into
25 the jury. And item two, the slip of paper, has gone in.

TRANSLATION/TRANSCRIPT

Original
language:

Spanish

Subject:

Telephone conversation (Tape C) between Gabriel Marin, defendant, and Jose Caicedo.

Text: S/A

Calls to be placed to Gabriel Marin at 252 E. 89th Street. The number being called is 212-427-8789.

Girl

Hello

Caicedo

Is Gabriel there?

Girl

No, he is not.

C

What time do you expect him back?

G

I don't. He has not been here. You can try Eric.

C

What?

G

You can try Eric.

C

Eric?

G

The bar.

C

What?

G

(frightened) Who is this?

C

Manuel.

G

Oh. I don't know where you can reach him. I really don't.

C

But-, he's gone over there?

G

No.

C

No?

G

No, he's not.

C

Oh, how can I get him?

G

You can try-. All right, I'll give you a number

C

O.K.

G

You can probably reach him at. Hold on, one second. Hello? You can probably reach him at 489-6010.

C

10. Right?

G

Aha. He will probably be there now.

C

All right.

G

O.K.?

C

O.K.

G

Bye.

C

G-bye.

-----end of call -----

TAPE TRANSCRIPTS

C May I speak to Gabriel Marin?

Marin Hello, hello

C Who is this?

Marin Gabi

C Gabriel, this is Manuel Caicedo

M Who is that?

C You know, Gina's friend.

Pause

M Which one is this? Ya, listen, do you speak Spanish?

C Yes.

M Tell me-

C Look. Wait a minute, please,

M Yes. No problem.

C Listen, It is because of something they told me that I want to talk to you.

M Go ahead, tell me,

C You can probably buy some merchandise from me.

M Yes?

C Then, I have six ounces to see that you are interested in purchasing them.

M And when did you arrive?

C I arrived yesterday.

M Yesterday

C Yes.

M Wait one moment, please.

C Yes.

M Hello

C Who gave you this telephone number, my wife? Was it my wife who gave you this telephone number? Was it my wife?

C I called your house, and then she gave me your phone number.

M You called my house- (Did I meet you down there?)

C Yes. And then your wife gave me your telephone number.

M Did I meet you down there?

C What?

TAPE TRANSCRIPTS

M Did I meet you down there?

C In Columbia?

M Yes

C No.

M Ah. So tell me, tell me, how is it, how is it?

C About 80 (%).

M Yes..

C Are you in a position to buy it?

M How much would you want per ounce?

C How much do I want per ounce?

M Yes, exactly.

C It all depends on how many ounces you want. Do you want all of them?

M Yes, I want them all.

C I would give them to you at \$650. per ounce.

M Is there any way that I can see you later, because I am working now. Is there any phone I can reach you at? or someplace I can go and see you later. I can go and see you then.

C No, not later. I am speaking to you from a public telephone.

M Aha. .

C Then, If you want, I can call you or go and see you later. Is that all right with you, no?

M Then I will give you a telephone number.

C I can call you there.

M Because I am going to be working there until late, and you can call me, let's say until 2-2:30 in the morning, because I am working until late. You know, it's in a restaurant, and I will be there until 4 o'clock in the morning, and you will be going back, won't you?

C Yes.

M Because when you return, I want to send some money down to Sergio. Do you know Sergio?

C Do I know Sergio?

M Yes, Sergio.

C Yes, I know Sergio.

M And a letter to Gina and my father-in-law.

C Ya.

TAPE TRANSCRIPTS

M Do you understand?

C Yes, I understand. Then, shall I call you? At what telephone number?

M 831-9978. So then, you can call me.

C At 2 o'clock in the morning?

M Yes, between 2 and 3.

C O.K.

M Then you call me over there. Bring a sample. Then, why, we can do some business during the day tomorrow. You understand?

C Yes, I understand.

M O.K. That way I can go with my partner, and we will take care of everything.

C Yes, O.K., fine.

M It is clearly understood. Then you will call me at 2 o'clock in the morning, and the address is: that place is located at 88th Street and Second Avenue.

C What is the name of the place?

M Eric's. How am I going to recognize you?

C I'm a friend of Gina's-

M Yes, but what I am saying is, how am I going to recognize you?

C Well, I am young. I have brown slacks and a brown shirt and a beige coat.

M O.K., then I will see you later on, Manuel.

C Ciao.

M Adios.

Certification:

This is a certified correct transcript-translation from the original Spanish tape. Done with S/A C. Smith.

Done this 6th day of November, 1974 at NEW YORK, NEW YORK.

Allen J. Goring
Interpreter

TAPE TRANSCRIPTS

TRANSLATION

Original language: Spanish

Subject: Telephone conversation (B) between Gabriel Marin, defendant and Jose Caicedo.

Text: S/A Testing 1-2-3. (A hum, then) 1-2-3-4, 1-2, 1-2-3-4 (etc.)
The time is approximately 12:36 A.M., December 5th, 1973. Conversation between SJ1-3-0113 and Gabriel Marin.

(no answer)

-----new call ----

S/A The time is approximately 12:32 A.M., continuation

Operator Hello, Eric

Caicedo Thank you. May I speak with Gabriel Marin?

Op I am sorry, he is not here right now. I haven't seen him tonight.

C Oh. O.K. Thank you.

Op You are welcome.

-----end of call -----

S/A The time is approximately 2:04 A.M., December 5th, 1973. Conversation SJ 1-3-0113 with Gabriel Marin.

Operator Hello, Eric

Caicedo May I speak with Gabriel Marin?

Op Ah, just one minute, please

C Thank you

Op (calling:) Gabi

Marin Hello

C Hello

M How are you?

C What's new? How's it there?

M Look at me. Listen, I ~~am~~ ^{went} ~~have been~~ waiting here for you.

C Listen, look. I go to bed early, see?

M Yes

C When you (or: he) call ~~in order to~~ when there is something doing-

M Yes

C Then-

M I want to ask you a question

C Yes

M What's the name of Gina's sister?

C Gina's sister?

M Yes

C Rosa

M And the other girl?

C The other sister? Debora.

M Debora. Go on. O.K. She married the brother

C Well.....

M Give her my love. (You're sleeping? no?)

C Yes. I am very tired. (They talk at the same time)

M I was working. I am waiting for your call.....

C I understand the way you feel. Good. But, let's see, We'll go out, all right?

M Look, I don't know. Whatever it has to be in order to see me. The man who.....the analysis

C Look

M Aha

C We meet tomorrow-

M They talk at the same time) look,.....is for me (or: belongs to me)

C It seems good, all right?

M Yes

C To morrow we get together at 12:30 P.M., or are you busy?

M 12:30

C Yes, 12:30

M Could I call you by phone?

C What?

M Could you call me? Because at 12 I'll be home asleep. I'll be working at the office, (and) then I'll be home. I have no telephone at home, you see.

C Oh. I don't know. Wait a moment.

M Yes, of course.

C O.K.

(Pause.)

Look,

M Ah...

C The telephone here...

TAPE TRANSCRIPTS

Transcr./transl, Tape B

33

M I'll get a pencil, O.K.?

C O.K.--

M Hello, give it to me,

C 58

M 58

C 6-3100

M 00

C Yes

M Is that the telephone number there?

C Yes. Extension 511

M 511

C Yes, definitely.

M Good. Then we will go, and I..... Wait for my call in the morning or when I wake up.

C Good. It would be better in the morning, you understand?

M But this won't work with me, because I go out at one..... come and talk to you

C Look, I thought-

M The sooner the better, because the people go to the bank, you understand?

C Ya. Look, that's what I thought. Good

M That's fine, Brother.

C Look. We can meet tomorrow at about 86th or-

M On the sidewalk or...

C The corner, O.K.? *yes - unless I see you I see*

M Eighty-six

C Yes. And you will be there, all right? And you could hold a ticket and the six ounces, I and you... we'll do business.

M Look, I have to call you at 12, right?

C Ya,

M Then I'll take the sample you'll give me, and I'll take it somewhere, you understand?

C Ya.

M Then I get there with my partner. Then... *it's not time*special care, then because in the afternoon *was not the money* early at night, you understand?

C Ya. O.K. Then, look

M Aha

C How do we remain: Do I call you-

M Wait, one thing: Call me at my work at 12:30. The telephone you called me at this evening-

C Ya.

M Call me. If I'm not there, then call me here at this number:

C Oh, at what number? There at the restaurant?

M Yes, at the restaurant.

C What was the number?

M Ah?

C What was that number?

M 489-6010

C At the house.

M That's my office

C Oh

M Because in my house I cannot have a telephone, because the people *look people* don't understand me. *put me sleep*

C Aha. Look, listen, otherwise, if you cannot meet me tomorrow, tell me now.

M On the contrary. We will meet. If you want to, we shall meet, we will meet. Well, we meet.

C Yes, that's a better corner.

M 88 abd second?

C Fine.

M And second Avenue, in the restaurant. I told you. Let's say at one P.M.

C Good.

M O.K.?

C O.K.

M Fine.

C Look, how do I know how I recognize you?

M When you enter, ask for Gabi

TAPE TRANSCRIPTS

Transl./transcr., Tape B

5.5

C O.K.

M Well, then, take it easy until tomorrow,

C Ciao,

M Adios,

ertification:

This is a certified correct translation of the original Spanish tape,
Done this 16th day of September, 1974 at NEW YORK, NEW YORK.

Allen J. Corbin
Interpreter

TRANSLATION

Original
language:

Spanish

Subject:

Telephone conversation (a) between Gabriel Marin, defendant and Jose Caicedo.

Text:

(loud noise, through which some of the words come) Phon.... Gabriel Marin approximately 7:27 A.M. (comes through clearly now), 12/5/73.

S/A?

Operator

The Concord.

Caideco

Is Gabriel there?

Op.

No, he is not.

C

Mmmm. Do you know where can I get him?

Op

No, I don't.

C

No-

Op

He should be here later this afternoon.

C

O.K.

Op

Thank you.

O.K.

O.K., thank you.

-----End of conversation-----

Op

Hello

Caideco

May I speak, please with Gabriel?

Operator

With who?

C

Gabi

Op

He's not here

C

Oh

Op

No, I don't expect him here for-, I don't know when-

C

Oh. Do you know-

Op

Do you want to leave a message for him?

C

No. This is Manuel.

Op

No, no. He's not here. What did he say? He'd be here at this hour?

C

No. You know, I just wanted to ask him, you know, if he could have-, do something, you know for-.

Op

No, he's-. We are not even open yet.

C

Oh, I see. O K.

Op

All right, byebye.

C

Thank you. Goodbye.

-----End of conversation-----

TAPE TRANSCRIPTS

Transl. Tape A

- 2 -

Certification:

This is a certified correct translation of the original Spanish tape.

Done this 12th day of September, 1974 at NEW YORK, NEW YORK.

Allen P. Corblin
Interpreter *J*

TRANSCRIPT - TRANSLATION

Original
languages:

English and Spanish

Subject:

Telephone conversations (Tape E) between Gabriel Marin, defendant and José Caicedo.

Text: S/A

The time is approximately 6:57, December 5th, 1973. Conversation of SJ-1-3-0113 with Gabriel Marin.

Man

.....
CON(020)
.....(Parkwood?)

Caicedo

Is Gabi there?

Man

No, I don't think so. Gabi (calls). No, he's out.

C

What time do you expect him back?

Man

An hour. An hour and a half.

C

Oh, O.K. O.K., thank you.

-----end of call -----

S/A

The time is approximately 6:57, 12/5/73.

Man

.....(Same name as above)

C

Is Gabi there?

Man

No, not yet.

C

Do you know-

Man

Leave a message?

C

Ya, this is Manuel.

Man

Tell him to call you?

C

No, he can't get no telephone with me, you know. I ain't got no telephone.

Man

Oh. O.K.

C

What time is he coming back?

Man

Maybe nine o'clock.

C

Nine o'clock?

Man

Ya.

C

O.K.

Man

I'll give you another number to call.

C

O.K.

Man

371-

C

Just a minute. 371-

Man

371-

C

(371-371) That's a boy or girl, huh?

TAPE TRANSCRIPTS

Man Same number, 212 number, that's all right.

C O.K.

Man Right.

C O.K. Bye.

-----end of call -----

Man Concord.

C Is Gabi there?

Man No. He won't be here till 9 o'clock.

C Oh, O.K., Thank you.

Man Bye

C G'bye.

-----end of call-----

Man Eric's

C Is Gabi there?

Man Scotty?

C Gabi

Man Oh, is Gabi here? No.

C No?

Man No.

C Do you know what time is he going over there?

Man Oh. This is Bobby Smith. I haven't seen him in about two days or three days, but I'll be here for about an hour or two, if you want to leave a message.

C Oh. O.K., just tell him that Manuel called.

Man O.K.

C I'll call him, you know, in one hour-

Man O.K.

C O.K., goodbye.

Man Did you try Elaine's?

C What?

Man Did you try Elaine's?

C Oh, yes. It's O.K.

TAPE TRANSCRIPT

Man O.K. Byebye.

C Byebye.

-----end of call-----

Girl Hello

C Is Gabi there?

G No, he's not.

C Hmm. I-. Do you know what time back?

G No, I haven't heard from him.

C Oh, I see.

G Do you have his office number?

C No, it's-

G It's 489-

C Ya, 489-

G 6010

C O.K.

G O.K.?

C O.K.

G Bye.

-----end of call-----

S/A The time is approximately 8:48 P.M., December 5th, 1973. Conversation Gabriel Marin and SJ-1-3-0113.

Girl Hello, Eric's

C Is Gabi there?

G No, he's not.

C You know what time he's coming back?

G What?

C What time is he coming back?

G He hasn't been in.

C Ooh. O.K. Can you tell him, you know, that Manuel's called?

G Who?

C Manuel

TAPE TRANSCRIPTS

G Emanuel?

C Right

G O.K.

C Bye.

G Byebye.

-----end of call-----

Man Hello

C Is Gabi there?

Man Who?

C Gabi

Man Ya, hold on. (Calls) Gabi

arin Hello

C Gabriel

M Aha

C This is Manuel

M Oh, Manuel. What happened?

C Look, I went there, and what happened

M Well, wait a while for me,- and your friend, ah! Who gave you this number?

C Ah?

M Who gave you this number?

C Gina

M This one that you are calling now.

C Oh, no. I called there, at your house, and Elaine told me that you were here

M Well, what's happening is that your friend's attitude

C No, what happened is that he was very tired out there in the car, and I became very tired of waiting.

M Well, could I see you alone, so you can give me that sample at last?

C Yes

M Well then, I see you upstairs where I saw you today

C Yes

TAPE TRANSCRIPTS

Transcr./transl.

- 5 -

M Will I see you at two?

C In the morning?

M Well, then you go and leave the sample. I'll go and get my friend, and I'll give it to him, and then we will do business tomorrow. But I didn't like your friend's attitude.

C Ya. Yes, I understand.

M And we came recommended and spent 15 to 20,000 already, and he's coming with this shit. You know!

C Ya, ya. Well, then you want the sample tonight.

M So then, this way I get up early in the morning, because I work from morning to night, you know?

C Is that where you work?

M Yea, yea, in this office that I have, that's a travel agency.

C Well, it cannot be tomorrow, so this way I'll bring it to you at one.

M Well, we could do it tonight, so we can be finished with this already. Because if I don't have it by tonight, this guy may call me in the morning and come to work.

C Well then, listen, you got the money and everything straight?

M That I will have tomorrow morning, don't worry about it. Tomorrow it will appear. That's exactly what I'm telling you. But I cannot have it tonight.

C O.K.

M O.K.

C Then I will bring it for you at two.

M At two in the morning, eh?

C And-

M Or at one, if you want one o'clock, come early and we will have a couple of beers together.

C Ya, ya. Fine. O.K.

M But this, do it please. *But please come alone -*

C Yes. Don't worry.

M O.K.

C.O.K. Ciao.

Transcr./transl.

- 6 -

S/A The time is approximately 9:29 P.M., December 5th, 1973

Man Hello

Caicedo Gabriel?

Man Wha?

C Is Gabriel there?

Man Who?

C Gabi

Man Yea

C Oh, thank you.

Marin Hello

C Gabriel

M Hello

C Look, listen. Could you wait till tomorrow? I'll bring that to you at one. At one o'clock today. I am going alone.

M What was that?

C Well, it's that I'm going to watch T.V., and it's raining and everything.

M Well, if you want, I'll pass by there later, when I leave here.

C Hello

-----the call is interrupted-----

M Hello

C Hello, Gabriel

M Looks like I pulled the wire on the phone, and it fell out of my hands, and we got disconnected. I called you twice, but you were not there. Well,

C Ya?

M I tell you what, - let's do this. What time is it now?

C It's around ten.

M It's twenty to ten. Why don't we meet each other here in half an hour?

C Nooo. Tomorrow, if you want.

M No, because that way we cannot save any time. Because you want to be in a hurry. Because I can leave from here and meet you at any place in a minute. You understand me?

C Well, no. Because this is what's happening: It's that I'm tired and I'm drunk.

TAPE TRANSCRIPTS

Transcr./transl.

- 7 -

M Well, this is what I am telling you. We can meet right now at any corner, any place, in the hotel or, you know, anywhere. Then you give me that thing, and then we will move it tonight, and then in the morning I will call you, and we will not have to lose the whole day like today. Understand what I mean?

C What should I say?

M Oh, well, we could do this. I'm coming over there in a minute.

C No.

M Where?

C Noo, no. I'll bring it to you tomorrow, O.K.

M You cannot do it right now?

C No. It cannot be done right now. That's why I called you right away.

M Oh, I see. Well then, tomorrow at 12:30.

C Earlier, if you want. At 12 or 12:30.

M 12:30. No, but I have to go someplace at 11. Well then, do you want to see me earlier than that? No, at 12 is O.K.

C No, at twelve. Twelve is good.

M Well then, come alone. Bring the sample, and I will give it to my friend Joe. You understand me? At 12:30, that's the time.

C O.K.

M And then I will call you back in the afternoon. But the way that guy came over here and talked, I did not--, understand?

C O.K. Take it easy.

M O.K. Right on

C Well, we see each other tomorrow.

M O.K.

C O.K. So long.

rtification:

This is a certified correct transcript-translation from the original Spanish tape. Done with S/A E. Garcia.

Done this 11th day of November 1974 at NEW YORK, NEW YORK.

[Signature]

TRANSLATION

Original
language:

Spanish

Subject:

Telephone conversation (Tape D) between Gabriel Marin, defendant, and Jose Calcedo. (Tape is marked Ex K1)

Operator

Hello, Eric

Text: Calcedo

Is Gabriel Maxxn there?

Man

Who?

C

Gabriel Marin there?

Op

Naw

C

No?

Op

Naw

G

Oh. What about Hector? Or Joe.

Op

No, no.

E

No?

Op

No.

C

O.K.

Op

O.K. Byebye.

C

Wait, wait, wait.

-----end of call-----

Operator

Concord

C

Is Gabi there?

Op

Gabi here? (pause) No he's out.

C

No? Do you know if he's coming back up there?

Op

I don't know.

C

No? O.K.

Op

Bye.

-----end of conversation-----

Operator

Hello

C

Is Gabi there?

Op

No, he's not. (This is) the same place, the number.

C

What?

Op

floor

The number that you are dialing is the same as the other one. One is one floor up, the other down.

C

Oh, I see.

Op

O.K.?

C Oh, I see.

Op O.K.?

C O.K. Byebye.

-----end of conversation -----

S/A Thomas Buxley, 5:50, December 6, 1973 conversation Gabriel Marin and SJ 1-3-0113

Operator Concord

C May I speak to Gabriel Marin?

Op He's not here right now.

C Do you know where he-

Op He'll be back later, he'll be back later, but-. What's your name. I'll make him call you

C Manuel

Op O.K., Manuel. I'll tell him to call you.

C O.K. Thanks.

-----end of call -----

Operator Hell, Eric's.

C May I speak with Gabriel Marin?

Op With who?

C Gabriel,- Gabi.

Op Gabi? Gabi (paging "Gabi"). He's not here.

C No? He's not there?

Op No.

C Do you know what time he's-

Op No, really- No.

C All right. Thank you.

Op Sorry. All right, bye.

-----end of call -----

Woman Hello

C Is Gabi there?

W No.

C Do you know where I can find him?
W No, I have no idea. He doesn't live here or anything. I haven't seen him in a long time. So I gave you the number of his office, right?
C He isn't there
W That's the only thing that I know where he can be reached, or Eric's, the bar,
C He isn't there. O.K.
W O.K.?
C Thanks a lot.
W You are welcome.
C Good bye.

-----end of call-----

S/A The time is approximately 8:37, December 6, 1973

Operator Hello, Eric's

C May I speak with Gabi?

Op Who?

C Gabriel

Op He's not here.

C No?

Op No.

C O.K. Thank you.

Op Byebye.

-----end of call-----

Op Hello

C May I speak with Gabriel Marin?

Op Ya, hold on. Hey, Gabri, hey Gabi, come on.

Marin Hello

C Are you all right?

M Aha

C What happened, brother, I called you-

M Listen, I was working, and I could not call you. I could not be called. I tried to call you at the number you gave me, but I did not have the room number. Let's get together today at 11 or 12 at the same place.

TAPE TRANSCRIPTS

C If you wish. What happens is that I am living with this guy, Rafael, and I called you at this time, because he would not be here.

M My brother told me. You got me?

C But if you want, he is going to leave later, do you understand?

M Aha - *like what time*

C Listen, you can call me at 10:30. *be leaving at 10:30 PM*

M Aha.

C You want me to call you?

E No, but if you want, you can come and pick the thing up.

M Where?

C At the hotel,

M At which hotel?

C At the Holiday Inn.

M Listen, I am working right now, and there they are scolding me because I am getting too many calls, and it's a business number, not personal. But can't you come outside for a minute at 10:30?

C Over there at 10:30?

M Yes

C Yes, but this is the problem: the only one who can take me over there is Rafael.

M What are you telling me? You don't know how to get here?

C I know how to go there, but I have no money, and if I ask him for money, he will want to bring me, because he wants his money from me.

M O.K. I will meet you at the corner of 9th Avenue.

C Ninth, at the corner? At the corner of 9th and 88th

M No, the corner where we always meet.

C O.K. , at the corner of 9th.

M Are you at 57th Street?

C Yes.

M What time is it now?

C It's-

M O.K. I'll tell you, we will meet at 11. Wait for me there.

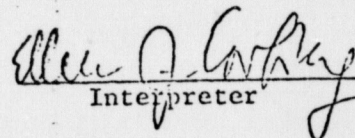
C O.K. It's 20 to 9.

M O.K.

C Will meet at 11, at the corner of 9th and 57th.
M The same corner as where the hotel is, right? I will pass by the hotel,
and we will walk together.
C Good.
M But be careful, so we can take care of ourselves. And don't call me
here anymore, because they reprimanded me.
C O.K., little brother, I will see you at 11.
M But listen, make sure that you wait for me, because I may be 5 or 10
minutes late.
C O.K.
M O.K.
C O.K.
N Ciao.
C Ciao.

Certification: This is a certified correct translation of the original Spanish tape.

Done this 13th day of September, 1974 at NEW YORK, NEW YORK.


Interpreter

C I just want to get the whole thing over with.

J If we are going to buy anything, we will buy the whole thing. But we got to see it. When we learned that you were coming here, we phoned you, and you were not at the hotel.

Noise

C Do you have to talk with anybody else?

J The way we do business is: We look at it. If it's good, we come up with the money. You understand? You want it that way, or don't you?

C Right.

J Let me see the package.

C There it is.

Noises, coffee cups (girl talking in the background)

J Where do you have it, Caicedo?

C In the trunk in back of the car. In the trunk. No, what you want is just a sample, right?

M Just a little bit, a little bit.

C Ya. I got to talk to my partner outside.

All three talking at the same time.

C Are you Joe?

J Yes.

C They (in Columbia) say hello to you.

M How is Orlando?

C Ya, he is over there. A lot of parties, a lot of dancing (verbatim: a lot of rhumba). That is the rhumba department.

Pause

J or Ma kilo, a kilo.....

C Wow, you took half a kilo for yourselves?

M Ya, the parties, the parties

C How much did you bring?

M One kilo.

C A kilo? Each of you?

J Each one of us.

C How did you get it into this country?

J and M talk at the same time.

C I am going outside now, to talk to him. It all depends on what he said.

J(unintelligible) house

C I think she (Gina) wants to come over.

M (laughs)

(long noise while C goes outside to meet agent)

Everyone talks at the same time

Noise

C (to agent:) They want the 6 ounces, but I told them I would not let them see the whole thing, that I won't take out any one of the bags. But they want to see at least one ounce, they don't want to see the 6 ounces. They want to look at one bag carefully, and then they'll get the money for tonight.

Agent Do they have the money now?

C No, they are going to get it. They have to go get it.

Ag Are they going to get it?

C They want to test it first, so - not yet. I told them that I have to talk to you, my partner, so that I know what to say. So, what do I say now?

Ag That they can have a sample, but we got to see the money first. We let them have the sample, but he must show us the money. He shows me the money, he can do whatever he wants. He don't have to give me the money. That I have to see the money, then he can do with the package whatever he wants. I have to see the money first of all. He can see it, - does he want to do it now, this minute? But first, before anything: the money. But everybody can say, I got the money, and they start taking your dope. First of all we got to see the money, and then he can see the merchandise. They can try it, but the only thing I want to see is money. Does he know that we have the merchandise?

C Yes.

Ag We have not seen the money yet. If we don't see the money, there is no business.

Noise while C walks back

C (to Marin) We got to see the money first before you can see any of the merchandise.

J I don't like that. We came here recommended by Gina, not just by a fool.

C Joe, you got to understand that I don't know you, Joe.

J I don't know you either. I don't understand. I want to see what we are going to buy. If it's good, we buy it, if not, to get it. Let's not fool around anymore.

C All I'm going to say is, it isn't 90%, but I'm pretty sure it is 80%. All this fooling around is not my fault. If he doesn't want to do anything, I can do nothing.

J I'm not going to get any money until I see what we are going to get, because if I get the money first, and the merchandise is no good, we should not have taken the money out.

C It is good.

Pause

C The thing is, he won't do anything before he sees the money. Because he says, anybody can say, I want it, and try it and never buy.

J Either we buy or we don't buy it. Do you understand? Tell him, if we would have wanted to rob him, we would have done so. You understand? I don't even want to have anything to do with your friend. I don't even want to see him. I don't like that bullshit, - Gina knows that.

C It's not my problem. I know who you are.

J Again, all we want is a little bit.

Noise while C goes out again

C He (Marin) says he knows my sister, that he used to live at my sister's house when he was in Columbia, and he thinks I am Gina's brother. He says he is not going to steal anything from me, because he thinks I am Gina's brother. But what they want is a little bit, so they can say whether they will bring the money or not.

Ag Bring him out.

C There are two.

Ag Bring both of them, I don't care.

C (goes back inside) He wants to talk to somebody, you or you or both of you.

C goes out again with Marin

Ag I got the thing over here. You can see it right now.

Loud argument between agent and Marin

M They know us down there (in Columbia), and all I want now is a little bit, just a little sample.

Ag Of course, of course. Let me see the money, the money. How am I going to know that you really got the money? I can't show it to you right out here in the street. I'm not crazy.

M That is not the way to do business.

Ag How long will it take until you get the money?

M Just have to go get it. One or two hours, that's all; or half an hour.

TAPE TRANSCRIPTS

Ag Ya, and I have to stay and sit here waiting for you. Then, go get the money, and you'll see it.

M Manuel knows thorough recommendation from down there. People down there know us very well.

Ag This is a very unusual way to do business, as far as I am concerned.

Both talk at the same time.

Ag I haven't seen any money yet, Mister. That way you won't see anything.

M We have been doing business with the people down there. We want to see just a little bit, don't you understand?

C Let's go inside.

M Why not drive down (the street) a little and get me a sample. Further down.

Ag Not on the street. I'm not going to do it on the street. Get into the car. I am going to show it to you.

M You know, it's hot (dangerous) around here, things are not good. One thing I can tell you is: go with Manuel, give him the sample, and he will bring it back to me, and I will tell him yes or no, and that's it.

Ag I'm going to show you. Get in the car.

C Get in, Brother (or: Pal), get in. Come see it.

Noises

(the car drives on without Marin)

C We should have brought a real sample.

Ag (talking into car radio) You can follow us. We got a problem. If you hear us, try to follow us.

End of KEL.

Certification

This is a certified correct transcript/translation of the original Spanish tape done with M. Caicedo.

Done this 21st day of November, 1974 at NEW YORK, NEW YORK.

[Signature]
Interpreter

NOTE SEIZED FROM INFORMANT

USA 35a - 475
(ED. 4-23-73)

GOVERNMENT

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

17

X

FPI-MI-12-8-73-10M-1510

FABRIEL-MARIN

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(ELAYNE)

Re H
12/3/73

SALUDAS A JOE 7896010 33W55

NOTE SEIZED FROM INFORMANT

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Received ¹ copies of the within
Appellant's Appendix
this 2 day of Jan, 1975.

Sign John D. Gaid ~~TH~~

For: Paul J. Curran Esq(s).

Att'ys for Appellee